



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,178	08/05/2003	Douglas Barton	5659-3	7116

7590 02/24/2006
Woodard, Emhardt, Moriarty, McNett & Henry LLP
Suite 3700
111 Monument Circle
Indianapolis, IN 46204

EXAMINER

A, PHI DIEU TRAN

ART UNIT	PAPER NUMBER
----------	--------------

3637

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/634,178	BARTON, DOUGLAS	
	Examiner	Art Unit	
	Phi D. A	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4 and 20-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Line 3 “ is impacted sufficiently to directly contact” is indefinite. The limitation is confusing the scope of the claim. The claim to a barrier system, not a method claim, and the limitation appears to be a method step. It is thus indefinite.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 4 are rejected under 35 U.S.C. 102(e) as being anticipated by Moore.

Moore (figure 2) shows an energy absorbing and vehicle directing barrier system comprising a barrier (20, 22, 24) located adjacent a vehicle path that extends parallel therewith, a first impact panel (22C, figure 2) with a first proximal end and a first distal end, the proximal end

Art Unit: 3637

(the part that is attached at 39) is fixedly mounted directly to the barrier to be immovable when the first impact panel is impacted by a vehicle, the first impact panel further having a first portion between the first proximal end and the first distal end that is parallel to the barrier, a second impact panel (22D) with a second proximal end and a second distal end, the second proximal end (the part which attaches at 39) is fixedly mounted directly to the barrier to be immovable when the second impact panel is impacted by a vehicle, the second impact panel further having a second portion between the second proximal end and the second distal end that is parallel to the barrier, the second portion positioned adjacent and inwardly of the first portion with the first portion overlapping the second portion and being unconnected thereto while being independently movable relative to the second portion, the first and second portion extending parallel to each other and to the barrier directing a vehicle impacting the first and second panel in a direction from the first proximal end to the second distal end, a first crushable member (24) positioned between the first impact panel and the barrier, the first crushable members absorbing a portion of the collision energy of a vehicle impact the first impact panel, a second crushable member (24 of the second panel) positioned between the second panel and the barrier to absorb a portion of a collision energy of a vehicle impact the first impact panel and the second impact panel and to direct a portion of collision energy along the length of the barrier system as the vehicle is directed by the first and second portion parallel to the barrier (inherently so), the first impact panel is impacted sufficiently to directly contact and deflect the first impact panel against the second impact panel sufficiently to deflect to the second impact panel against the second crushable member (figure 2 shows the conditions), the first panel having a first inner plate (the inner part of plate) positioned adjacent the barrier and extends along therewith, a first outer plate

Art Unit: 3637

(the outermost part), a first intermediate plate (the part that angles and is between the outer and inner plate) joining the first inner plate and the first outer plate together, the first intermediate plate extending outwardly from the barrier in a direction from the first proximal end to the first distal end spacing the first outer plate apart from the barrier forming a cavity in which is located the first crushable member, the first inner plate being parallel to the barrier, the second inner plate being parallel to the barrier, the second panel having a second inner plate (the inner part of plate) positioned adjacent the barrier and extends along therewith, a second outer plate (the outermost part), a second intermediate plate (the part that angles and is between the outer and inner plate) joining the second inner plate and the second outer plate together, the second intermediate plate extending outwardly from the barrier in a direction from the second proximal end to the second distal end spacing the second outer plate apart from the barrier forming a cavity in which is located the second crushable member, the first outer plate resting against outwardly of the second outer plate and forces the second outer plate toward the barrier when the first impact panel is impacted by a vehicle with the first outer plate and the second outer plate being flat (inherently so when the force of impact is high) and extending in a direction of the barrier directing the vehicle in a direction along the barrier, the first inner plate defining one or more fastener holes (35) for fastening the impact panel to the barrier, a pliant fastening system including pliable material being placed between the impact panel and the barrier, a fastener (glue) fastening the pliable material between the impact panel and the barrier, the impact panel is formed at least partially from steel.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (6554530) in view of Fujii et al (4319539).

Moore shows all the claimed limitations except for first outer plate being parallel to the barrier, the second outer plate being parallel to the barrier.

Fujii et al shows first and second outer plates (13) being parallel to the barrier and to each other.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Moore's structure to show first outer plate being parallel to the barrier, the second outer plate being parallel to the barrier as taught by Fujii et al because it would allow the outer plates to better absorb the impact of the vehicle and dampen as the vehicle normally travels along and parallel to the barrier.

5. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (6554530).

Moore shows all the claimed limitations. The claimed method steps of absorbing impact energy from a vehicle would have been the obvious method steps of absorbing impact energy from a vehicle with Moore's barrier.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 4, 20-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows barrier systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phi Dieu Tran A

2/21/06